

JAMES V. BRADY

IBLA 81-9

Decided December 29, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring void mining claims M MC 20670 through M MC 20680.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

APPEARANCES: George W. Richardson, Esq., Butte, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James V. Brady has appealed from the September 18, 1980, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Santa Maria Rainbow, the Santa Maria Rainbow Nos. 2 through 8, the Victory Lode, and the No. 1 and No. 2 Hoosier mining claims abandoned and void. M MC 20670 through M MC 20680. 1/ The decision was based on

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1/ The notice of appeal was filed on behalf of James V. Brady, but it does not appear to have been filed on behalf of Harold Reid, a colocator of the claims who had also been served with a copy of the decision by BLM.

appellant's failure to file an affidavit of annual assessment work or notice of intention to hold the claims by October 22, 1979. The claims had been located prior to October 21, 1976, and recorded with BLM on December 28, 1978. These filings are required by section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(a) and 43 CFR 3833.4(a).

[1] On appeal appellant raises the following argument:

[T]hat the BLM has misinterpreted the law and ignored the compliance of this appellant with the Mining Act of 1872, and subsequent Acts of Congress, and that the BLM has failed to acknowledge the performance of annual assessment work actually done upon the property and that this action is unreasonable, harsh and discriminatory and in violation of the Fifth and Fourteenth Amendment of the U.S. Constitution.

This argument is answered, however, by reference to the text of the pertinent statutory provision, 43 U.S.C. § 1744 (1976) which provides in part as follows:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection \* \* \*:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim \* \* \*, an affidavit of assessment work performed thereon, o[r] a detailed report provided by section 28-1 of Title 30, relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

\* \* \* \* \*

(c) The failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner.

These provisions have been implemented by Departmental regulations 43 CFR 3833.2-1 and 3833.4. Thus, it is clear that where the owner of an unpatented mining claim located prior to October 21, 1976, fails to file timely an affidavit of annual assessment work or notice of intention to hold the claim, his claim is deemed conclusively to be abandoned and to be null and void. Stanley Bishop, 50 IBLA 371 (1980); Donald D. Vesely, 50 IBLA 277 (1980); Kenneth K. Parker, 48 IBLA 129 (1980). In Topaz Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979), appeal filed Civ. No. 79-2255 (10th Cir. Nov. 21, 1979), the court sustained the statutory recordation requirement and its implementing regulations against constitutional challenges.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

